

SENATE BILL No. 359

DIGEST OF INTRODUCED BILL

Citations Affected: IC 13-11-2-37.9; IC 13-18-10; IC 13-20-10.

Synopsis: Confined feeding operations and composting. Provides that a person may not operate a confined feeding operation unless an approval issued to the person by the department of environmental management is in effect. Provides for renewal of an approval for the construction, expansion, or operation of a confined feeding operation. Provides that the law concerning the registration of composting facilities applies to facilities for the composting of vegetative matter and other organic material. (Currently the law applies only to facilities for the composting of vegetative matter resulting from landscaping maintenance and land clearing projects.) Specifies the conditions under which an application for registration of a composting facility may be denied or a registration may be revoked.

Effective: July 1, 2014.

Charbonneau

January 14, 2014, read first time and referred to Committee on Environmental Affairs.



Second Regular Session 118th General Assembly (2014)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

SENATE BILL No. 359

A BILL FOR AN ACT to amend the Indiana Code concerning environmental law.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 13-11-2-37.9 IS ADDED TO THE INDIANA
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2014]: **Sec. 37.9. "Composting facility for**
4 **vegetative matter", for purposes of IC 13-20-10, has the meaning**
5 **set forth in IC 13-20-10-1(a).**

6 SECTION 2. IC 13-18-10-1, AS AMENDED BY P.L.1-2010,
7 SECTION 62, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
8 JULY 1, 2014]: Sec. 1. **(a)** A person may not start:

- 9 (1) construction **(as defined in IC 13-11-2-40.8)** of a confined
10 feeding operation; or
11 (2) expansion of a confined feeding operation that increases:
12 **(A)** animal capacity; ~~or~~
13 **(B)** manure containment capacity; or
14 **(C)** both **animal capacity and manure containment**
15 **capacity;**
16 without obtaining the prior approval of the department.



1 (b) A person may not operate a confined feeding operation
2 unless an approval issued to the person by the department is in
3 effect.

4 (c) An approval issued by the department under this chapter
5 remains in effect for five (5) years after the date of issuance.

6 SECTION 3. IC 13-18-10-1.5 IS ADDED TO THE INDIANA
7 CODE AS A NEW SECTION TO READ AS FOLLOWS
8 [EFFECTIVE JULY 1, 2014]: Sec. 1.5. (a) If a person who receives
9 an approval to construct or expand a confined feeding operation
10 under section 1(a) of this chapter begins the construction or
11 expansion at least thirty (30) days before the expiration of the
12 approval but the construction or expansion will not be completed
13 at least thirty (30) days before the expiration of the approval, the
14 person:

15 (1) must submit an application for renewal of the approval at
16 least thirty (30) days before the expiration of the approval;
17 and

18 (2) is not required to comply with section 2(b) of this chapter
19 with respect to the application.

20 (b) If a person who receives an approval to construct or expand
21 a confined feeding operation under section 1(a) of this chapter will
22 not begin construction or expansion of the confined feeding
23 operation at least thirty (30) days before the expiration of the
24 approval, the person must:

25 (1) submit an application for renewal of the approval at least
26 thirty (30) days before the expiration of the approval; and

27 (2) comply with the requirements of section 2(b) of this
28 chapter with respect to the application.

29 (c) If a person who receives an approval to operate a confined
30 feeding operation under section 1(b) of this chapter wishes to
31 renew the approval, the person:

32 (1) must submit an application for renewal of the approval at
33 least thirty (30) days before the expiration of the approval;

34 and

35 (2) is not required to comply with section 2(b) of this chapter
36 with respect to the application.

37 (d) If a person:

38 (1) is required under subsection (a), (b), or (c) to submit an
39 application for renewal of an approval; and

40 (2) fails to apply for renewal of the approval at least thirty
41 (30) days before the expiration of the approval;

42 the person is not eligible for renewal of the person's approval and



1 **must apply for a new approval under this chapter.**

2 SECTION 4. IC 13-18-10-1.7 IS ADDED TO THE INDIANA
3 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
4 [EFFECTIVE JULY 1, 2014]: **Sec. 1.7. An application for:**

5 **(1) an initial approval under section 1 of this chapter; or**

6 **(2) renewal of an approval under section 1.5 of this chapter;**
7 **must be submitted to the department on a form provided by the**
8 **department.**

9 SECTION 5. IC 13-18-10-2, AS AMENDED BY P.L.127-2009,
10 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
11 JULY 1, 2014]: Sec. 2. (a) **An application for an approval under**
12 **section 1 of this chapter of the construction or expansion of a confined**
13 **feeding operation or for the renewal of an approval under section**
14 **1.5 of this chapter must be made on a form provided by the**
15 **department. An applicant must submit the completed application form**
16 **and submitted to the department together with the following:**

17 (1) Plans and specifications for the design and operation of
18 manure treatment and control facilities.

19 (2) A manure management plan that outlines procedures for the
20 following:

21 (A) Soil testing.

22 (B) Manure testing.

23 (3) Maps of manure application areas.

24 (4) Supplemental information that the department requires,
25 including the following:

26 (A) General features of topography.

27 (B) Soil types.

28 (C) Drainage course.

29 (D) Identification of nearest streams, ditches, and lakes.

30 (E) Location of field tiles.

31 (F) Location of land application areas.

32 (G) Location of manure treatment facilities.

33 (H) Farmstead plan, including the location of water wells on
34 the site.

35 (5) A fee of one hundred dollars (\$100). The department shall
36 refund the fee if the department does not make a determination in
37 accordance with the time period established under section 2.1 of
38 this chapter.

39 (b) An applicant who applies for **an approval under section 1 of this**
40 **chapter to construct or expand a confined feeding operation on land for**
41 **which a valid existing approval has not been issued or for renewal of**
42 **an approval under section 1.5(b) of this chapter shall, make a**



1 ~~reasonable effort to provide notice~~ not more than ten (10) working days
 2 after submitting ~~an~~ the application, **make a reasonable effort to**
 3 **provide notice under this subsection:**

4 (1) to the county executive of the county in which the confined
 5 feeding operation is to be located or expanded; and

6 (2) to each owner and each occupant of land of which any part of
 7 the boundary is one-half (1/2) mile or less from the following:

8 (A) Any part of the proposed footprint of either or both of the
 9 following to be located on the land on which the confined
 10 feeding operation is to be located:

11 (i) A livestock or poultry production structure.

12 (ii) A permanent manure storage facility.

13 (B) Any part of the proposed footprint of either or both of the
 14 following to be located on the land on which the confined
 15 feeding operation is to be expanded:

16 (i) A livestock or poultry production structure.

17 (ii) The expanded area of a livestock or poultry production
 18 structure.

19 The notice must be sent by mail, be in writing, include the date on
 20 which the application was submitted to the department, and include a
 21 brief description of the subject of the application. The applicant shall
 22 pay the cost of complying with this subsection. The applicant shall
 23 submit an affidavit to the department that certifies that the applicant
 24 has complied with this subsection.

25 (c) ~~Plans and specifications for manure treatment or control~~
 26 ~~facilities for a confined feeding operation must secure the approval of~~
 27 ~~the department. The department shall approve an application under~~
 28 **section 1 of this chapter for an approval for** the construction, ~~or~~
 29 expansion, ~~and the or~~ operation of ~~the manure management system of~~
 30 **the a** confined feeding operation **or an application under section 1.5**
 31 **of this chapter for renewal of an approval** if the commissioner
 32 determines that the applicant meets the requirements of:

33 (1) this chapter;

34 (2) rules adopted under this chapter;

35 (3) the water pollution control laws;

36 (4) rules adopted under the water pollution control laws; and

37 (5) policies and statements adopted under IC 13-14-1-11.5
 38 relative to confined feeding operations.

39 SECTION 6. IC 13-18-10-2.1, AS AMENDED BY P.L.127-2009,
 40 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 41 JULY 1, 2014]: Sec. 2.1. (a) The department:

42 (1) shall make a determination on an application ~~made submitted~~



under section 2 of this chapter not later than ninety (90) days after the date the department receives the completed application, including all required supplemental information, unless the department and the applicant agree to a longer time; and

(2) may conduct any inquiry or investigation, consistent with the department's duties under this chapter, the department considers necessary before making a determination.

(b) If the department fails to make a determination on an application not later than ninety (90) days after the date the department receives the completed application, the applicant may request and receive a refund of an approval application fee paid by the applicant, and the commissioner shall:

(1) continue to review the application;

(2) approve or deny the application as soon as practicable; and

(3) refund the applicant's application fee not later than twenty-five (25) working days after the receipt of the applicant's request.

(c) The commissioner may suspend the processing of an application and the ninety (90) day period described under this section if the department determines within thirty (30) days after the department receives the application that the application is incomplete and has mailed a notice of deficiency to the applicant that specifies the parts of the application that:

(1) do not contain adequate information for the department to process the application; or

(2) are not consistent with applicable law.

(d) The department may establish requirements in an approval regarding ~~that part of the applicant's~~ **applicant's** confined feeding operation ~~that concerns manure handling and application~~ to assure compliance with:

(1) this chapter;

(2) rules adopted under this chapter;

(3) the water pollution control laws;

(4) rules adopted under the water pollution control laws; and

(5) policies and statements adopted under IC 13-14-1-11.5 relative to confined feeding operations.

(e) Subject to subsection (f), the commissioner may deny an application upon making either or both of the following findings:

(1) A responsible party intentionally misrepresented or concealed any material fact in either or both of the following:

(A) An application for approval under section 1 of this chapter.

(B) A disclosure statement required by section 1.4 of this chapter.



(2) An enforcement action was resolved against a responsible party as described in either or both of the following:

(A) Section 1.4(c)(5) of this chapter.

(B) Section 1.4(c)(6) of this chapter.

(f) Before making a determination to approve or deny an application, the commissioner must consider the following factors:

(1) The nature and details of the acts attributed to the responsible party.

(2) The degree of culpability of the responsible party.

(3) The responsible party's cooperation with the state, federal, or foreign agencies involved in the investigation of the activities involved in actions referred to in section 1.4(c)(5) and 1.4(c)(6) of this chapter.

(4) The responsible party's dissociation from any other persons or entities convicted in a criminal enforcement action referred to in section 1.4(c)(5) and 1.4(c)(6) of this chapter.

(5) Prior or subsequent self-policing or internal education programs established by the responsible party to prevent acts, omissions, or violations referred to in section 1.4(c)(5) and 1.4(c)(6) of this chapter.

(g) Except as provided in subsection (h), in taking action under subsection (e), the commissioner must make separately stated findings of fact to support the action taken. The findings of fact must:

(1) include a statement of ultimate fact; and

(2) be accompanied by a concise statement of the underlying basic facts of record to support the findings.

(h) If the commissioner denies an application under subsection (e), the commissioner is not required to explain the extent to which any of the factors set forth in subsection (f) influenced the denial.

(i) The department may amend an approval under section 1 of this chapter or revoke an approval under section 1 of this chapter:

(1) for failure to comply with:

(A) this chapter;

(B) rules adopted under this chapter;

(C) the water pollution control laws; or

(D) rules adopted under the water pollution control laws; and

(2) as needed to prevent discharges of manure into the environment that pollute or threaten to pollute the waters of the state.

SECTION 7. IC 13-18-10-2.2, AS AMENDED BY P.L.127-2009, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 2.2. ~~(a) If an applicant receives an approval under~~



1 ~~this chapter and completes construction or expansion;~~ Not more than
 2 thirty (30) days after ~~the date the applicant completes the completion~~
 3 **of construction or expansion of a confined feeding operation,** the
 4 applicant shall execute and send to the department an affidavit that
 5 affirms under penalties of perjury that the confined feeding operation:

- 6 (1) was constructed or expanded; and
 7 (2) will be operated;

8 in accordance with the requirements of the department's approval.

9 ~~(b) Construction or expansion of an approved confined feeding~~
 10 ~~operation must:~~

- 11 ~~(1) begin not later than two (2) years; and~~
 12 ~~(2) be completed not later than four (4) years;~~

13 after the date the department approves the construction or expansion of
 14 the confined feeding operation or the date all appeals brought under
 15 IC 4-21.5 concerning the construction or expansion of the confined
 16 feeding operation have been completed; whichever is later.

17 SECTION 8. IC 13-18-10-2.3 IS REPEALED [EFFECTIVE JULY
 18 1, 2014]. Sec. 2.3: A confined feeding operation must submit a manure
 19 management plan that outlines procedures for soil testing; manure
 20 testing; and maps of manure application areas to the department at least
 21 one (1) time every five (5) years to maintain valid approval for the
 22 confined feeding operation under this chapter.

23 SECTION 9. IC 13-20-10-1 IS AMENDED TO READ AS
 24 FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 1. (a) **As used in this**
 25 **chapter, applies to "composting facility for vegetative matter"**
 26 **means a facility used in the composting (as defined in**
 27 **IC 13-11-2-38(a)) of:**

- 28 (1) vegetative matter; ~~resulting from landscaping maintenance~~
 29 ~~and land clearing projects.~~
 30 (2) **other organic material; or**
 31 (3) **both vegetative matter and other organic material.**

32 (b) This chapter does not apply to the following:

- 33 (1) A person who conducts a composting operation at the person's
 34 residence or farm for vegetative matter and other types of organic
 35 material that are:

- 36 (A) generated by the person's activities; and
 37 (B) stored, treated, or disposed of at the person's residence or
 38 farm.

- 39 (2) A person who conducts a composting operation that processes
 40 less than two thousand (2,000) pounds of vegetative matter during
 41 a year.

- 42 (3) Temporary stores of vegetative matter where only an



1 incidental amount of composting will occur before removal of the
2 matter.

3 SECTION 10. IC 13-20-10-8 IS AMENDED TO READ AS
4 FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 8. **(a) The department**
5 **shall approve an application for registration of a composting**
6 **facility for vegetative matter under this chapter or renewal of a**
7 **registration if the applicant meets the requirements of this chapter**
8 **and rules adopted by the board.**

9 **(b) The department may deny an application for the registration**
10 **of a composting facility for vegetative matter or renewal of a**
11 **registration if the application does not meet the requirements of**
12 **this chapter or rules adopted by the board.**

13 **(c) A registration under this chapter:**

- 14 (1) expires five (5) years after the date the composting facility for
15 vegetative matter is registered; and
16 (2) may be renewed by the person who registered the composting
17 facility if the person applies to the department.

18 **(d) A registration under this chapter may be revoked if the**
19 **registrant:**

- 20 **(1) violates any environmental management laws; and**
21 **(2) continues to operate the registrant's composting facility**
22 **for vegetative matter in violation of this chapter and rules**
23 **adopted by the board.**

